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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-912]

Certain New Pneumatic Off-The-Road Tires from the People's Republic of China; 2013-2014: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On December 21, 2018, the United States Court of International Trade (Court) issued a final judgment in *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-176 (CIT Dec. 21, 2018) (*Qihang Tyre*), sustaining the Department of Commerce's (Commerce) remand results for the sixth administrative review of the antidumping duty order on certain new pneumatic off-the-road tires (OTR tires) from the People's Republic of China (China) covering the period of review (POR) September 1, 2013, through August 31, 2014. Commerce is notifying the public that the Court has made a final judgment that is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to certain exporters identified herein.

DATES: Applicable December 31, 2018.

FOR FURTHER INFORMATION CONTACT: Keith Haynes, AD/CVD Operations Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-5139.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2016, Commerce issued its *Final Results*¹ in the sixth administrative review of the order on OTR tires from China. Between April 29, 2016, and May 12, 2016, the plaintiffs in this litigation, consisting of the two mandatory respondents, Qingdao Qihang Tyre Co., Ltd. (Qihang) and Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Co. Ltd., and Xuzhou Hanbang Tyre Co., Ltd. (collectively, Xugong), and the following separate rate respondents, Qingdao Free Trade Zone Full-World International Trading Co., Ltd. (Full World), Trelleborg Wheel Systems (Xingtai) Co., Ltd. (TWS Xinghai), and Weihai Zhongwei Rubber Co., Ltd. (Weihai Zhongwei) timely filed complaints with the Court challenging certain aspects of Commerce's *Final Results*.² On May 31, 2016, domestic interested parties Titan Tire Corporation and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC intervened as defendant-intervenors but withdrew from these cases on September 29, 2017.³

On April 4, 2018, the Court remanded Commerce's *Final Results*.⁴ In its remand redetermination, Commerce 1) recalculated, under protest, export price and constructed export price for Xugong's and Qihang's sales without making downward adjustments for Chinese irrecoverable value added taxes (VAT); 2) reconsidered its surrogate value for reclaimed rubber and determined that Romanian import price data, obtained from the Global Trade Atlas,

¹ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014*, 81 FR 23272 (April 20, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum (IDM).

² See *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-35 (CIT April 4, 2018) (*Qihang Tyre*), at *4.

³ *Id.* at n.2.

⁴ *Id.* at 61.

constituted the best available information; and 3) redetermined its surrogate value for foreign inland freight, using the World Bank's *Doing Business 2016: Thailand* report in place of the 2015 version of that report that Commerce used in the *Final Results*.⁵ After accounting for all such changes and issues in the *Qihang Tyre* remand, the resulting antidumping duty margins are 13.93 percent for Qihang and 23.45 percent for Xugong.⁶ Because Commerce calculated margins for unexamined respondents eligible for a separate rate using the weighted-average dumping margins of the two mandatory respondents in the underlying administrative review,⁷ we have recalculated the margin for the separate rate respondents who are parties to this litigation.⁸ The recalculation resulted in a margin of 20.03 percent for TWS Xingtai, Full World, and Zhongwei.⁹ On December 21, 2018, the Court sustained the *Qihang Tyre* remand results.¹⁰

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), Commerce is notifying the public that the final judgment in this case is not in harmony with Commerce's final results of the administrative review of the antidumping duty

⁵ See Final Results of Redetermination Pursuant to Ct. Remand at 2, *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-35 (CIT 2018), dated July 24, 2018 (Remand Results).

⁶ See memoranda, "Draft Results of Redetermination Pursuant to Court Remand in the 2013-14 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Draft Remand Analysis Memorandum for Xuzhou Xugong Tyres Co.," dated June 12, 2018 (Xugong Draft Results Analysis Memo) at 2, "Draft Results of Redetermination Pursuant to Court Remand in the 2013-14 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Draft Remand Analysis Memorandum for Qingdao Qihang Tyre Co.," dated June 12, 2018 (Qihang Draft Results Analysis Memo).

⁷ See *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 61166 (October 9, 2015) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM) at 10-12, unchanged in the *Final Results*.

⁸ See memorandum, "Draft Results of Redetermination Pursuant to Court Remand in the 2013-2014 Antidumping Duty Administrative Review of Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Draft Results Margin Calculation for Separate Rate Companies," dated June 12, 2018 (Draft Remand SR Memo).

⁹ *Id.*

¹⁰ See *Qingdao Qihang Tyre Co., Ltd., et al. v. United States*, Consol. Court No. 16-00075; Slip Op. 18-176 (CIT Dec. 21, 2018).

order on OTR tires from China covering the POR. Thus, Commerce is amending the *Final Results* with respect to the weighted-average dumping margins for the mandatory respondents, and the separate rate respondents who are parties to this litigation, as listed above.

Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (Act), Commerce must publish a notice of a court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s December 21, 2018, judgment sustaining the *Qihang Tyre* remand results constitutes a final decision of the Court that is not in harmony with Commerce’s *Final Results*. As such, Commerce has published this notice in fulfillment of the publication requirement of *Timken*.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Final Results* with respect to the mandatory respondents, and the separate rate respondents who are parties to this litigation. The revised weighted-average dumping margins for these exporters during the period September 1, 2013, through August 31, 2014, are as follows:

Exporter	Weighted-Average Dumping Margin (percent)
Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Company Ltd., or Xuzhou Hanbang Tyre Co., Ltd.	23.45
Qingdao Qihang Tyre Co., Ltd.	13.93
Qingdao Free Trade Zone Full-World International Trading Co., Ltd.	20.03
Trelleborg Wheel Systems (Xingtai) China, Co. Ltd.	20.03
Weihai Zhongwei Rubber Co., Ltd.	20.03

Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise pending the end of the period of appeal or, if appealed, pending a final and conclusive court decision. In the event the Court's ruling is not appealed or, if appealed, and upheld by the CAFC, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise exported by the companies identified above using the assessment rate calculated by Commerce in the *Qihang Tyre* remand results, as listed in the above table.

Cash Deposit Requirements

Unless the applicable cash deposit rates have been superseded by cash deposit rates calculated in an intervening administrative review of the antidumping duty order on OTR tires from China, Commerce will instruct CBP to require a cash deposit for estimated antidumping duties at the rate noted above for each specified exporter, for entries of subject merchandise, entered or withdrawn from warehouse, for consumption, on or after December 31, 2018.

Notification to Interested Parties

Commerce has issued and published this notice in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: February 13, 2019.

Gary Taverman,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.

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